

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION

MOSES SMITH JR. §
v. § CIVIL ACTION NO. 6:09cv172
DIRECTOR, TDCJ-CID §

MEMORANDUM ADOPTING REPORT AND RECOMMENDATION
OF THE UNITED STATES MAGISTRATE JUDGE
ON PETITIONER'S MOTION FOR DEFAULT JUDGMENT

The Petitioner Moses Smith filed this application for the writ of habeas corpus complaining of the legality of his confinement. This Court ordered that the case be referred to the United States Magistrate Judge pursuant to 28 U.S.C. §636(b)(1) and (3) and the Amended Order for the Adoption of Local Rules for the Assignment of Duties to United States Magistrate Judges.

Smith has filed three motions for a default judgment, after lengthy delays in the filing of the answer. The Respondent has been granted an extension of time in which to answer and has filed his answer within the extension.

On December 2, 2009, the Magistrate Judge issued a Report recommending that Smith's motions for a default judgment be denied. The Magistrate Judge observed that an extension of time had been granted and that default judgments were not available in habeas corpus proceedings. Smith filed objections pointing out that the Respondent had over seven months in which to respond to his petition; he made no mention of the Magistrate Judge's conclusion that default judgment was not available in habeas corpus proceedings. Smith's objections are without merit.

The Court has conducted a careful *de novo* review of the pleadings in this cause, including the Report of the Magistrate Judge and the Plaintiff's objections thereto. Upon such *de*

novo review, the Court has determined that the Report of the Magistrate Judge is correct and that the Plaintiff's contentions are without merit. It is accordingly

ORDERED that the Plaintiff's objections are overruled and the Report of the Magistrate Judge (docket no. 22) is ADOPTED as the opinion of the District Court. It is further

ORDERED that the Plaintiff's motions for a default judgment (docket no.'s 11, 13, and 17) and his motion for a hearing date on his requests for a default judgment (docket no. 18) are hereby DENIED.

SIGNED this 18th day of February, 2010.


MICHAEL H. SCHNEIDER
UNITED STATES DISTRICT JUDGE